

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL MILLER,

Plaintiff,

v.

JOSEPH LOMBARDO, *et al.*,

Defendants.

Case No. 2:23-cv-00049-GMN-DJA

ORDER

Plaintiff Michael Miller brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Ely State Prison. (ECF No. 1-1.) On January 20, 2023, this Court ordered Miller to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before March 20, 2023. (ECF No. 3.) The Court warned Miller that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.*) That deadline expired and Miller still has not filed a fully complete application to proceed *in forma pauperis*, paid the full \$402 filing fee, or otherwise responded to the Court's order.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public's

1 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
2 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
3 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
4 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
5 *Malone*, 833 F.2d at 130).

6 The first two factors, the public's interest in expeditiously resolving this litigation
7 and the Court's interest in managing its docket, weigh in favor of dismissing Miller's
8 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
9 because a presumption of injury arises from the occurrence of unreasonable delay in filing
10 a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542
11 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
12 cases on their merits—is greatly outweighed by the factors favoring dismissal.

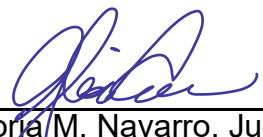
13 The fifth factor requires the Court to consider whether less drastic alternatives can
14 be used to correct the party's failure that brought about the Court's need to consider
15 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
16 that considering less drastic alternatives *before* the party has disobeyed a court order
17 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
18 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
19 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
20 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
21 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
22 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
23 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
24 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until
25 and unless Miller either files a fully complete application to proceed *in forma pauperis* or
26 pays the \$402 filing fee for a civil action, the only alternative is to enter another order
27 setting another deadline. But the reality of repeating an ignored order is that it often only
28 delays the inevitable and squanders the Court's finite resources. The circumstances here

1 do not indicate that this case will be an exception: there is no hint that Miller needs
2 additional time or evidence that he did not receive the Court's order. Setting another
3 deadline is not a meaningful alternative given these circumstances. So the fifth factor
4 favors dismissal.

5 **II. CONCLUSION**

6 Having thoroughly considered these dismissal factors, the Court finds that they
7 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
8 prejudice based on Miller's failure to file a fully complete application to proceed *in forma*
9 *pauperis* or pay the full \$402 filing fee in compliance with this Court's February 6, 2023,
10 order. The Clerk of Court is directed to enter judgment accordingly and close this case.
11 No other documents may be filed in this now-closed case. If Miller wishes to pursue his
12 claims, he must file a complaint in a new case.

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14 DATED THIS 20 day of April 2023.

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18 Gloria M. Navarro, Judge
19 United States District Court
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